



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

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ARIZONA ATTORNEY GENERAL

June 27, 1984

The Honorable David C. Bartlett
Arizona House of Representatives
State Capitol
Phoenix, Arizona 85007

Re: I84-093 (R84-105)

Dear Representative Bartlett:

You have asked whether a constitutional amendment would be a required predicate to enactment of legislation regulating or freezing hospital rates in order to achieve health care cost containment. Your question is posed both as to the creation of a new regulatory body and as to a grant of such authority to an existing body. For the following reasons, it is our view that no such constitutional amendment would be necessary.

Central to our analysis is the fundamental rule that, except for those things necessarily inhibited by the Federal and State Constitutions, the state legislature may pass any act because the whole power not prohibited by those constitutions is retained in the people and their elected representatives. Earhart v. Frohmler, 65 Ariz. 221, 178 P.2d 436 (1947). Unlike the Federal Constitution, state constitutions are not grants of power, but limitations thereof. Id. at 224. The Legislature is empowered to act with wide latitude in dealing with problems and evils against which laws should afford protection, it being possessed of all power not expressly denied to it or allocated to another branch of the government. Hart v. Bayless Inv. & Trading Co., 86 Ariz. 379, 346 P.2d 1101 (1959); American Federation of Labor v. American Sash & Door Co., 67 Ariz. 20, 189 P.2d 912 (1948), aff'd 335 U.S. 538, 69 S.Ct. 258 (1949). Thus, unless it can be demonstrated that a

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legislative enactment regulating health care institution rates either violates the constitution or infringes upon a power vested in some other branch of government, such legislation could be enacted without the need for a constitutional amendment.

A review of the Arizona Constitution discloses no provision which would require amendment in order to legislate with regard to regulating or freezing rates either through a new body or through investiture of any existing body with such authority. Contrary to the situation, for example, which existed with regard to ambulance services^{1/}, there appears to be no provision in the constitution relating to the regulation of rates of hospitals. While Article XV, Section 3 of the Constitution empowers the Corporation Commission to prescribe just and reasonable rates and charges to be made and collected by public service corporations, hospitals do not fall within the definition of "public service corporations" under Article XV, Section 2.

We must also determine whether the regulation of hospital rates and charges might result in the denial of due process or the taking of private property without just compensation contrary to the Fifth and Fourteenth Amendments to the United States Constitution and Article II, Section 17 of the Arizona Constitution. It is our opinion that regulation of hospital rates would not violate these laws. As long as there is a rational basis for regulating and/or freezing rates with no illegal discrimination being practiced, it is unlikely that a challenge on the stated grounds would succeed. See, e.g., De

1. Article XXVII of the Arizona Constitution empowers the Legislature to provide for the regulation of ambulances and ambulance services in all matters relating to services provided, routes served, response times and charges. The amendment was approved by the voters November 2, 1982 as a result of a desire to continue the regulation of ambulance services despite "deregulation" of common carriers of persons or property. Since the "deregulation" was accomplished by constitutional amendment (Proclamation of November 25, 1980, amending Article XV, Sections 2, 10), resumption of regulation of ambulance services by constitutional amendment (Proclamation of November 30, 1982 adding Article XXVII) was necessary.

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Rieux v. Five Smiths, Inc., 499 F.2d 1321 (Temp.Emer.Ct.App. 1974), cert. denied 419 U.S. 896, 95 S.Ct. 176 (1974); Bowles v. Willingham, 321 U.S. 503, 64 S.Ct. 641 (1944).

Based upon the foregoing, we conclude that there is no requirement to amend the State Constitution in order to permit the Legislature to enact laws intended to address the circumstances raised in your questions.

Sincerely,



BOB CORBIN
Attorney General

BC:SMS:pd